
OPINION OF THE PUBLIC ACCESS COUNSELOR

ROBBIN G. STEWART,
Complainant,

v.

MARION COUNTY SHERIFF'S OFFICE,
Respondent.

Formal Complaint No.
18-FC-20

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Marion County Sheriff's Office ("MCSO") violated the Access to Public Records Act¹ ("APRA"). Attorney Kevin Charles Murray filed a response on behalf of the MCSO. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on February 2, 2018.

¹ Ind. Code §§ 5-14-3-1 to -10

BACKGROUND

Robbin G. Stewart (“Complainant”), an attorney, visited the information desk at the City-County Building in Indianapolis to determine if his client had an open warrant. The Complainant alleges that the staff laughed at him and refused to tell him. The Complainant submitted a written records request and the Sergeant who took it wrote a denial stating that “you must be here in person to have your own warrant checked.” The Complainant filed his Complaint with my Office on February 2, 2018. My Office notified the MCSO of the Complaint on February 6, 2018 and received the response of the MCSO on February 20, 2018.

In the response, the MCSO states that MCSO’s administrative office located at 40 S. Alabama Street is the appropriate location to submit a written APRA request, not the City-County Building. The MCSO asserts that the Complainant first verbally requested that a police deputy run an open warrant search on an individual other than the Complainant. The deputy told the Complainant that the MCSO does not run searches for open warrants unless the individual is there in-person. The MCSO states that the Complainant left, and returned shortly thereafter and spoke with Sergeant John Rogers. The Complainant again asked for the open warrant search, and Sergeant Rogers reiterated that open warrant searches are not conducted unless the individual is present. At this point, the Complainant identified himself as the individual’s attorney. The police deputy and Sergeant Rogers requested identification verifying that the Complainant was in fact an attorney. The MCSO states that the Complainant was unable to provide such identification. The Complainant requested a denial in writing, and wrote out the request for

an open warrant search on a blank sheet of paper. Sergeant Rogers wrote a denial on the bottom of the page that the MCSO denied the request because someone must come in person to have his or her open warrant status checked.

ANALYSIS

This case presents the question about whether the Marion County Sheriff's Office properly denied the Complainant's records request.

1. The Access to Public Records Act ("APRA")

It is the public policy of the State of Indiana that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Ind. Code § 5-14-3-1. Further, APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." *Id.* There is no dispute that the Marion County Sheriff's Office ("MCSO") is a public agency for the purposes of the APRA; and thus, subject to the Act's disclosure requirements. Ind. Code § 5-14-3-2(q)(6).

Therefore, unless otherwise provided by statute, any person may inspect and copy the MCSO's public records during regular business hours. *See* Ind. Code § 5-14-3-3(a). Still, the Act contains both mandatory and discretionary exceptions to the general rule of disclosure. Specifically, APRA prohibits a public agency from disclosing certain records unless access is specifically required by state or federal statute

or is ordered by a court under the rules of discovery. *See* Ind. Code § 5-14-3-4(a). In addition, APRA lists other types of public records that may be excepted from disclosure at the discretion of the public agency. *See* Ind. Code § 5-14-3-4(b).

Notably, a public agency is required to make a response to a written request that has been mailed within seven (7) days after it is received or the request is deemed denied. Ind. Code § 5-14-3-9(c). If a records request is provided in writing, and the request is denied, the denial must also be provided in writing and contain a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record as well as the name and title of the official denying the record. Ind. Code § 5-14-3-9(d).

1.1 Requests for Information

With a few exceptions, APRA does not contemplate requests for information—APRA governs requests for records. The distinction is important. In this case, the Complainant did not request a copy of the warrant. The Complainant sought information about whether or not an open warrant existed for his client. The written request provided to my Office by the Complainant says “[t]his is a public records request for whether [my client] has an open warrant.” I recommend the Complainant formulate future APRA requests so that he is requesting records, not asking questions.

Because the Complainant asked for information, and not a public record, the MCSO was not obligated by APRA to provide this information to the Complainant. However, for the purpose of providing guidance on APRA issues, I will proceed with this Opinion as if the Complainant requested a copy of the warrant from the MCSO.

1.2 Custodian of Warrant Records

MCSO asserts that a warrant issued by a court is a court record. The custodian of court records in Marion County is the Marion County Clerk's Office. The MCSO contends that the Complainant should direct his request to the Marion County Clerk's Office. In the MCSO's response, the MCSO provides a copy of an email sent to the Complainant in which the MCSO attorney notified the Complainant that warrant information is posted by courts on the MyCase public website. The MSCO attorney sent this email as soon as he received the notice of the Complaint. I commend this effort to notify the Complainant of this avenue for obtaining the information sought. I recommend reminding staff at the City-County Building and at the administrative office that warrant information may be obtained from either the Marion County Clerk's Office or from MyCase in the event that another individual requests a copy of an open warrant on an individual other than themselves. Then the staff would know where to direct the requestor after denying the request.

1.3. Confidentiality of Warrant Information

The MCSO notes that the MCSO uses the National Crime Information Center ("NCIC") and the Indiana Data and Communications System ("IDACS") to check open warrants. Federal and Indiana law prohibit criminal justice agencies from disclosing information obtained from the

NCIC or the IDAC to unauthorized parties.² APRA provides that public agencies may not disclose records deemed confidential by state and/or federal statute. Thus the deputy and Sergeant Rogers properly declined to reveal whether there was an open warrant on the Complainant's client.

1.4 Sufficiency of the Denial

Had the Complainant requested a copy of the warrant, the written denial provided by the MCSO would have been insufficient. The name and position of the person denying the request might have been included in the written denial—the initials and signature of Sergeant Rogers are not very clear. Furthermore, the denial does not cite to the specific exemption that would authorize the withholding of the copy of the warrant. The denial states that an individual must appear in person to have his or her warrant checked, which is referenced in the relevant Indiana Administrative Code governing the IDACS, but this statement does not provide the APRA exemption that allows for non-disclosure of the record—which is that records deemed confidential by state or federal law may not be disclosed. Ind. Code § 5-14-3-4(a)(1); Ind. Code § 5-14-3-4(a)(3).

² See 240 IND. ADMIN. CODE 5-2-10; 28 U.S.C. § 534; 28 C.F.R. § 20; 28 C.F.R. § 223.20.

CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor that the Marion County Sheriff's Office did not violate the Access to Public Records Act.

A handwritten signature in black ink, appearing to be 'LH Britt', written in a cursive style.

Luke H. Britt
Public Access Counselor